

Court of Appeals, State of Michigan

ORDER

Michael Glisson v Dianne Gerrity MD

Docket No. 264433

LC No. 04-416578-NH

William C. Whitbeck, CJ
Presiding Judge

Brian K. Zahra

Pat M. Donofrio
Judges

This Court was aware of the Supreme Court's opinion in *Saffian v Simmons*, ___ Mich ___; ___ NW2d ___ (2007), at the time the opinion in this case was issued. *Saffian* does not overrule, vacate or in any way modify this Court's holding in *Geralds v Munson Healthcare*, 259 Mich App 255; 673 NW2d 792 (2003). Rather, *Saffian* merely stands for the proposition that a defendant may not unilaterally determine whether an affidavit of merit is so defective that the defendant is relieved of the obligation to answer or otherwise respond to a properly served summons and complaint. A defendant who fails to timely respond to such a complaint is subject to entry of a default. Had the Supreme Court intended to overrule, vacate or otherwise modify *Geralds*, *supra*, it would have expressly said so. In the absence of an express statement from our Supreme Court overruling, vacating or modifying *Geralds*, we are obligated to continue to follow *Geralds* under MCR 7.215(J)(1). Nothing presented initially in this case or in the motion for reconsideration causes us to declare a conflict with *Geralds* pursuant to MCR 7.215(J)(2). The motion for reconsideration is DENIED.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 17 2007

Date

Sandra Schultz Mengel
Chief Clerk